CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:		Force	☐ Discourt.	U.S.
Carter Garfield		202002344	I^-	Abuse	O.L.	☐ Injury	
Carter Garfield Squad #10		Squau #10	202002344		Abuse	☐ O.L.	
Incident Date(s) Location of Incident:				Precinct:	18 Mo. SOL	EO SOL	
Sunday, 02/23/2020 8:23 PM §87(2)(b)			ĺ	105	8/23/2021	4/9/2022	
Date/Time CV Reported	Date/Time CV Reported CV Reported At:		How CV Reported	d:	Date/Time	e Received at CC	RB
Wed, 03/25/2020 12:58 PM	CCRB		Call Processing System			, 03/25/2020 12:58 PM	
Complainant/Victim	Type	Home Addre	ess				
Subject Officer(s)	Shield	TaxID	Command				
1. POM Michael Demarino	18459	960444	105 PCT				
2. POM Steven Damiani	18918	962346	105 PCT				
3. POF Jillian Barbieri	25820	964909	105 PCT				
4. POM Nikolas Capoziello	21697	963896	105 PCT				
5. POF Michelle Fecker	22924	941016	105 PCT				
6. POM Christophe Spotts	01927	961322	105 PCT				
7. POM Orlando Insignares	17830	958461	105 PCT				
8. POF Samantha Saville	29610	967324	105 PCT				
Officer(s)	Allegatio	on			Inv	estigator Recor	nmendation
A.POM Nikolas Capoziello	Abuse: P	olice Officer Nikolas C	apoziello threatene operty.	d to			
B.POM Nikolas Capoziello	Abuse: P	Abuse: Police Officer Nikolas Capoziello threatened to remove § 87(2)(b) to the hospital.					
C.POM Nikolas Capoziello	Abuse: P § 87(2)(b)	Abuse: Police Officer Nikolas Capoziello entered					
D.POM Michael Demarino		Abuse: Michael Demarino forcibly removed § 87(2)(b) to the hospital.					
E.POM Steven Damiani	Abuse: P § 87(2)(b)	Abuse: Police Officer Steven Damiani forcibly removed					
F.POF Jillian Barbieri	Abuse: P § 87(2)(b)	Abuse: Police Officer Jillian Barbieri forcibly removed to the hospital.					
G.POM Nikolas Capoziello	Abuse: P	Abuse: Police Officer Nikolas Capoziello forcibly removed					
H.POF Michelle Fecker	Abuse: P § 87(2)(b)	Abuse: Police Officer Michelle Fecker forcibly removed					
I.POM Christophe Spotts	Abuse: P § 87(2)(b)	Abuse: Police Officer Christophe Spotts forcibly removed					
J.POM Orlando Insignares	Abuse: P § 87(2)(b)	Abuse: Police Officer Orlando Insignares forcibly removed					
K.POF Samantha Saville	Abuse: P § 87(2)(b)	Abuse: Police Officer Samantha Saville forcibly removed to the hospital.					
L.POM Michael Demarino	Abuse: N § 87(2)(b)	Abuse: Michael Demarino entered in Queens.					

Officer(s)	Allegation	Investigator Recommendation
M.POM Steven Damiani	Abuse: Police Officer Steven Damiani entered in Queens.	
N.POF Jillian Barbieri	Abuse: Police Officer Jillian Barbieri entered in Queens.	
O.POM Nikolas Capoziello	Abuse: Police Officer Nikolas Capoziello entered in Queens.	
P.POF Michelle Fecker	Abuse: Police Officer Michelle Fecker entered in Queens.	
Q.POM Christophe Spotts	Abuse: Police Officer Christophe Spotts entered in Queens.	
R.POM Orlando Insignares	Abuse: Police Officer Orlando Insignares entered in Queens.	
S.POF Samantha Saville	Abuse: Police Officer Samantha Saville entered in Queens.	
T.POM Michael Demarino	Force: Police Officer Michael Demarino used physical force against §87(2)(b)	
U.POF Jillian Barbieri	Force: Police Officer Jillian Barbieri used physical force against §87(2)(b)	
V.POM Michael Demarino	Force: Michael Demarino used physical force against \$87(2)(b)	
W.POF Jillian Barbieri	Force: Police Officer Jillian Barbieri used physical force against §87(2)(b)	
X.POF Samantha Saville	Abuse: Police Officer Samantha Saville searched §87(2)(b)	
Y.POF Jillian Barbieri	Abuse: Police Officer Jillian Barbieri searched § 87(2)(b)	

Case Summary

<u>Case Summary</u>
On March 25, 2020, \$87(2)(6) called the CCRB and filed the following complaint
on behalf of herself.
On February 23, 2020, at 7:55 p.m., \$87(2)(b) called 911 from her home \$87(2)(b) to report someone continuously breaking into her home. She
did not request for police but asked for Detective Cooper of the 105th Precinct.
At approximately 8:20 p.m., PO Spotts and PO Saville, PO Insignares, PO Capoziello, PO
Barbieri, PO Fecker, PO Demiani, and PO Demarino, all of the 105 th Precinct, arrived on scene. At
one point, \$887(2)(b) closed her door on the officers, and PO Capoziello said to \$887(2)(b) that if
she did not open her door, they would break it down (Allegation A: Abuse of Authority – Threat
to damage property, \$87(2)(9) opened her door and PO Capoziello threatened
to remove [\$\frac{8\frac{1}{2}}{2}(2)(b)] to the hospital if she did not speak with EMTs (Allegation B: Abuse of
Authority: Threat of removal to hospital, \$837(2)(9) PO Capoziello then stuck his foot in
her doorway preventing her from closing it (Allegation C: Abuse of Authority – Entry of
premises, § 87(2)(9)
At approximately 8:30 p.m., one of the EMTs determined that \$87(2)(6) needed to go to
the hospital. All eight officers oversaw \$87(2)(b) s removal to the hospital (Allegation D: Abuse
of Authority – Forcible removal to hospital, \$87(2)(9) (Allegations E-
of Authority – Forcible removal to hospital, \$87(2)(9) (Allegations E-K: Abuse of Authority – Forcible removal to hospital, \$87(2)(9) All eight officers entered
s home to do so (Allegation L: Abuse of Authority – Entry of premises,
(Allegations M-S: Abuse of Authority – Entry of premises,
§ 87(2)(g)
did not comply with officer commands and PO Barbieri and PO Demarino
used force to place \$87(2)(6) in handcuffs (Allegation T: Force – Physical force, \$87(2)(9)
(Allegation U: Force: - Physical force, \$87(2)(9) While placing
in handcuffs, PO Barbieri and PO Demarino allegedly cut her back, left side, chest, and
throat (Allegation V: Force: - Physical force, \$87(2)(9) (Allegation W:
Force – Physical force, \$87(2)(9) Before placing her in the ambulance, PO Barbieri and PO
Saville searched \$87(2)(b) s coat pockets (Allegation X and Y: Abuse of Authority – Search
(of person), \$87(2)(9) \$87(2)(b) was then taken to \$87(2)(b)
No summonses or arrests resulted from this incident.
Body-worn camera footage was obtained from all eight officers (BRs 05-13). Relevant portions will be discussed below. There was no other video of the incident.
portions will be discussed below. There was no other video of the incident.
Findings and Recommendations
Allegation (A) Abuse of Authority: Police Officer Nikolas Capoziello threatened to damage
§ 87(2)(b) s property.
Allegation (B) Abuse of Authority: Police Officer Nikolas Capoziello threatened to remove
\$ 87(2)(b) to the hospital.
Allegation (C) Abuse of Authority: Police Officer Nikolas Capoziello entered 887(2)(b)
<u> </u>
It is undisputed that EMTs eventually made the determination that \$87(2)(b) needed to
go to the hospital.
did not make any statements regarding Allegations A and B. However, in PO
Capoziello's BWC (BRs 05, 13), at the 3:30 mark, in response to \$87(2)(b) closing her door, PO
Capoziello states, "Miss, if you do this, someone is going to have to break down your door." At the
9:00 minute mark, PO Capoziello is speaking with \$87(2)(6) and says, "We could do it two ways
I don't want to take you out of your house and force you onto the ambulance. But if that's the only
option you're giving us, we're going to have to do something like that." [§ 87(2)(b)] consistently
stated that PO Canoziello stuck his foot in her door, preventing her from closing it (RRs 01, 02)

CCRB Case # 202002344

Allegation C is therefore pleaded as an entry. consistently stated in her intake (**BR 01**) and phone interview (**BR 02**) that she called 911 that day to report an intruder in her home and explained that she found multiple hairs that do not belong to her in her washing machine as proof. Instead of Det. Cooper, multiple officers and EMTs came to her home, where she was told by an EMT that she needed to be evaluated. In her phone interview (**BR 02**), \$87(2)(6) stated that she refused to be seen by EMTs and yelled at everyone to leave. She shut her door on the officers and called 911 a second time, asking the operator to send the officers away. At one point, \$87(2)(b) opened her door again, and PO Capoziello stuck his foot in her door and prevented her from closing it. Officers then forced their way into her home and took her to §87(2)(b) s 911 calls (**BRs 14-16**) were obtained by the investigation and are consistent with her statements. PO Capoziello (BR 03) and PO Barbieri (BR 04) were both interviewed. Both consistently stated that they received a radio call for an EDP at \$87(2)(b) EMTs responded. On scene, an EMT determined that \$87(2)(b) needed to go to the hospital. Neither officer recalled a supervisor on scene. PO Saville (BR 30) was also interviewed, but she could not recall any details of these allegations. PO Capoziello (BR 03) provided additional details. He stated that §87(2)(b) cited unfamiliar human hairs, missing food, and tampered clothes as evidence of an intruder. \$87(2)(5) stated that the intruder was able to break into her house without setting off her alarm and was not seen on her security camera. §87(2)(b) had also never seen the intruder herself. PO Capoziello stated that \$87(2)(b) had closed her door on officers before it could be determined by EMTs that she was mentally well. PO Capoziello stated that he said that \$87(2)(6) s door could be taken down because \$87(2)(b) could have been a danger to herself and officers needed to maintain a visual on her for her safety as well as so EMTs could speak with her. He stated that he stuck his foot in her door for the same reason, which was to keep a visual on [807(2)[6]] He further clarified was refusing to speak with EMTs, and when a job comes over as an EDP they are usually required to speak with EMTs before officers can leave. PO Capoziello stated that he did not consider § 37(2)(b) to be a "violent" EDP. He also could not recall when exactly the EMTs arrived on scene. PO Barbieri (**BR 04**) recalled officers "holding the door open" to prevent \$87(2)(b) closing it again. PO Barbieri could not recall which officers did so, nor could she remember how they prevented \$87(2)(b) from closing the door. PO Barbieri said that EMS had already determined that § 87(2)(b) needed to go to the hospital when officers began holding § 87(2)(b) door open. The EMTs on scene could not be identified and interviewed for this incident. Police radio communications were also obtained (BRs 17, 18) in which central is heard requesting units to respond to \$87(2)(b) for a "54 EDP." In PO Capoziello's body-worn camera footage (**BRs 05, 13**), when he arrives §87(2)(b) , EMTs are already on scene. At the 3:25 minute mark, § 87(2)(b) speaking directly to PO Spotts and PO Capoziello. \$37(2)(b) is stating she does not want to go to the hospital because she is not mentally ill. PO Spotts gestures to the EMTs standing next to him and says, "Well, EMS is going to decide that." \$87(2)(b) replies, "No, I'm going to decide that." She then shuts her door, locks it, and turns off her porch light. The EMT does not say anything. PO Capoziello says, "Miss, if you do this, someone is going to have to break down your door." At the 8:22 minute mark, \$37(2)(b) opens her door and speaks with PO Capoziello, who tells her that she needs to be evaluated by EMTs before the officers can leave. At the 9:00 minute mark, PO Capoziello is speaking with \$87(2)(b) and \$87(2)(b) repeats that she does not want

to talk to the EMTs, and PO Capoziello places his foot in the doorway to prevent \$87(2)(b) closing her door. At the 9:45 minute mark, PO Capoziello uses his hand to hold open \$87(2)(b)

screen door. His foot is not visible, but it appears that \$87(2)(6) attempts to shut her door and PO
Capoziello blocks it with his foot. It is not until the 14:00 minute mark that an EMT makes the
determination that §87(2)(b) needs to go to the hospital.
§ 87(2)(g)
Patrol Guide procedure 216-01 (BR 19) concerning AIDED cases states that "Uniformed
members of the service concerned shall cooperate with ambulance/hospital personnel in every
reasonable manner."
Patrol Guide procedure 221-13 (BR 20) defines an emotionally disturbed person as
someone who appears to be mentally ill or temporarily deranged and is conducting himself in a
manner which a police officer reasonably believes is likely to result in serious injury to himself or
others. It adds that the safety of all persons involved is paramount in cases involving emotionally
disturbed persons. If such person is dangerous to himself or others, force may be used when it is
reasonable to prevent serious physical injury or death. Members of the service will only use the
reasonable force necessary to gain control or custody of a subject.
According to People v. Rodriguez, 77 A.D.3d 280, 2010 (BR 21), officers are permitted to
enter premises without a warrant if they reasonably believe that there is an emergency and an
immediate need for their assistance for the protection of life or property and a reasonable basis to
associate the emergency with the area being entered.
said that EMTs said she needed to be evaluated prior to PO Capoziello sticking
his foot in her door and threatening to break it down. However, in the BWC footage the EMTs are
heard making their determination of \$87(2)(b) s mental state and deciding that she needed to go
to the hospital after PO Capoziello had threatened to break down her door and stuck his foot in her
door. § 87(2)(9)

Allegation (D) Abuse of Authority: Michael Demarino forcibly removed \$87(2)(5)
the hospital.
Allegation (E) Abuse of Authority: Police Officer Steven Damiani forcibly removed
to the hospital.
Allegation (F) Abuse of Authority: Police Officer Jillian Barbieri forcibly removed 887(2)(b)
to the hospital.
Allegation (G) Abuse of Authority: Police Officer Nikolas Capoziello forcibly removed
to the hospital.
Allegation (H) Abuse of Authority: Police Officer Michelle Fecker forcibly removed
to the hospital.
Allegation (I) Abuse of Authority: Police Officer Christophe Spotts forcibly removed
to the hospital.
Allegation (J) Abuse of Authority: Police Officer Orlando Insignares forcibly removed
to the hospital.
Allegation (K) Abuse of Authority: Police Officer Samantha Saville forcibly removed
to the hospital.
Allegation (L) Abuse of Authority: Michael Demarino entered 387(2)(b)
Allegation (M) Abuse of Authority: Police Officer Steven Damiani §87(2)(b)
Allegation (N) Abuse of Authority: Police Officer Jillian Barbieri
Allegation (O) Abuse of Authority: Police Officer Nikolas Capoziello 887(2)(b)
All 4' (D) Al CA 41 '4 D I' OCC M' 1 II E 1 MONOTON
Allegation (P) Abuse of Authority: Police Officer Michelle Fecker 887(2)(b)
Allogation (O) Abuse of Authority, Police Officer Christophe Spotts 507(9)
Allegation (Q) Abuse of Authority: Police Officer Christophe Spotts 857(2)(b)
Allegation (R) Abuse of Authority: Police Officer Orlando Insignares § 87(2)(b)
Anegation (R) Abuse of Authority. I once officer offiando hisignares 8 00/200
Allegation (S) Abuse of Authority: Police Officer Samantha Saville § 87(2)(b)
Anegation (b) Abuse of Authority. Tonce Officer bandantia bavine sacra-
consistently stated in her intake (BR 01) and phone interview (BR 02) that she
did not want to go to the hospital.
In PO Barbieri's body-worn camera footage (BR 06, 13), captured at the 12:20 minute
mark, \$87(2)(b) speaking with an EMT. The EMT tells \$87(2)(b) that she is hallucinating and
needs to go to the hospital. \$87(2)(6) says that this is not true. The EMT then turns to PO
Barbieri and says, "Just grab her." It is only after this directive do officers enter \$87(2)(b)
home, place her in handcuffs, and remove her to the hospital.
Patrol Guide procedure 216-01 (BR 19) concerning AIDED cases states that "Uniformed
members of the service concerned shall cooperate with ambulance/hospital personnel in every
reasonable manner."
According to People v. Rodriguez, 77 A.D.3d 280, 2010 (BR 21), officers are permitted to
enter premises without a warrant if they reasonably believe that there is an emergency and an

CCRB Case # 202002344

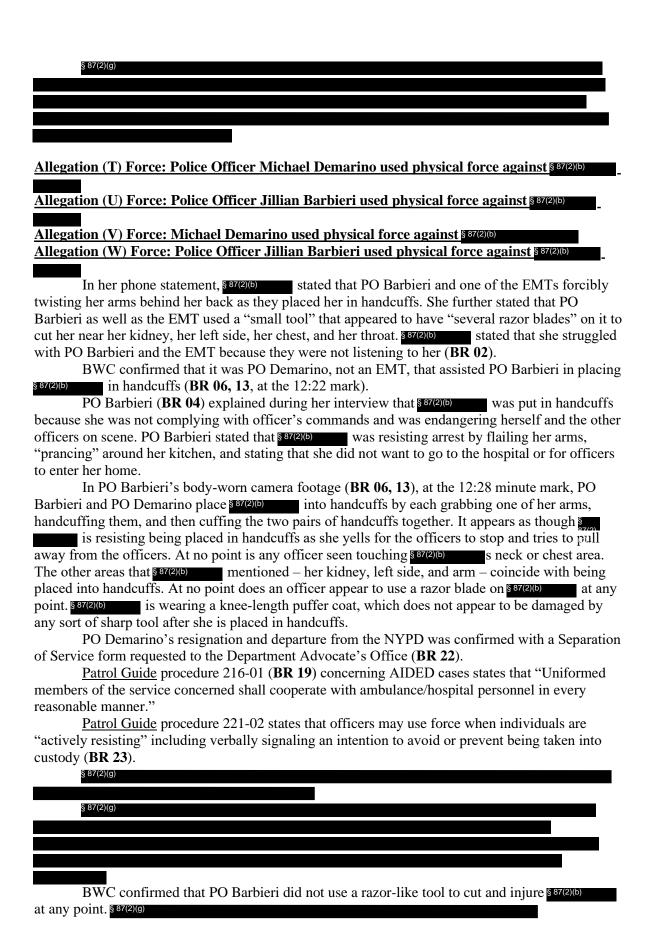
PO Demarino's resignation and departure from the NYPD was confirmed with a Separation

immediate need for their assistance for the protection of life or property and a reasonable basis to

§ 87(2)(g)

associate the emergency with the area being entered.

of Service request to the Department Advocate's Office (BR 22).



CCRB CTS – Confidential Page 5

Allegation (X) Abuse of Authority: Police Officer Samantha Saville searched § 87(2)(b)

Allegation (Y) Abuse of Authority: Police Officer Jillian Barbieri searched [897(2)] did not allege a search. However, at the 16:00 minute mark of PO Saville's BWC (BR 07, 13), as \$87(2)(b) is being placed in handcuffs, PO Saville says, "She just has keys on her." At the 13:30 mark in PO Barbieri's BWC (BR 06, 13), while PO Barbieri is walking says, "What are you doing?" and PO Barbieri replies, "I'm just checking your pockets." did not mention anything missing after the incident, including her keys (**BRs**) 01, 02). § 87(2)(b) also said that she does not take any medication. In PO Barbieri's BWC (**BRs 06, 13**), at 10:39, PO Capoziello asks \$87(2)(6) any medications, and she says that she does not. At the 12:50 mark, PO Saville is standing next to and bending over slightly. PO Saville then asks § 87(2)(b) "Are these your keys?" To which \$87(2)(b) says yes. PO Saville then bends down again, facing \$87(2)(b) At the says, "What 13:30 mark, while PO Barbieri is walking \$87(2)(b) to the ambulance, \$87(2)(b) are you doing?" and PO Barbieri replies, "I'm just checking your pockets." \$87(2)(b) savs she only has keys on her. Keys are then heard jingling. PO Saville (BR 30) stated that 387(2)(5) was searched because officers needed to ensure that she was not carrying any weapons. She did not recall searching §87(2)(b) herself, nor could she recall who else searched her. PO Barbieri (BR 04) did not recall going into \$37(2) s pockets but stated that it was probably to "search for weapons." She further stated that \$87(2)(b) was not under arrest but merely placed her in handcuffs to restrain her. PO Capoziello (BR 03) did not remember seeing PO Barbieri reach into §87(2)(b) pockets. PO Capoziello did not recall any weapons being found on \$37(2)(5) nor did he recall any bulges in § 37(2)(b) s clothing that would suggest that she was concealing a weapon. NYPD Patrol Guide 221-13 (BR 20) states that officers, once an EDP has been restrained, are to "Remove property that is dangerous to life or will facilitate escape." In People v. De Bour 40 N.Y.2d 210 (1976) (BR 24), officers need reasonable suspicion that an individual is armed and dangerous to frisk the individual. People v. Sanchez, 38 N.Y.2d 72 (1975) (BR 29) officers must reasonably articulate particular facts indicating that an individual possesses a weapon within their pocket to justify the search of a pocket. Patrol Guide 212-11 (BR 25) concerning conducting a frisk, and when appropriate, a search, states: "If a police officer develops a reasonable suspicion that a person is armed and dangerous, the officer may frisk the person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury and of a sort not ordinarily carried in public places by law abiding persons. Reasonable suspicion that a person is armed and dangerous may arise from the officer's observations or the facts and circumstances of the encounter including: a. Reasonable suspicion that the suspect has committed, is committing or is about to commit, a violent crime (e.g., assault with a deadly weapon, burglary, rape, robbery, etc.) b. Observation of something on the person that the officer reasonably suspects is a weapon c. A statement by the suspect stopped that she/he is armed d. Information known by the officer that the suspect may be carrying a weapon, such as statements from a victim or witness." § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which §87(2)(b) has been a party (**BR 26**).
- PO Capoziello has been a member of service for three years and has been listed as a subject officer in once CCRB complaint and one allegation, which was not substantiated.
- PO Barbieri has been a member of service for three years and this is the first CCRB complaint to which she has been a subject.
- PO Demarino was a member of service for four years and this was the first CCRB complaint to which he has been a subject.
- PO Damiani has been a member of service for four years and this is the first CCRB complaint to which he has been a subject.
- PO Fecker has been a member of service for fifteen years and has been listed as a subject in four complaints and six allegations, none of which were substantiated. §87(2)(9)
- PO Spotts has been a member of service for five years and has been listed as a subject officer in once CCRB complaint and one allegation, which was not substantiated.
- PO Insignares has been a member of service for five years and this is the first CCRB complaint to which he has been a subject.
- PO Saville has been a member of service for two years and has been a subject in one CCRB complaint and one allegation, which was not substantiated.

Mediation, Civil and Criminal Histories

• This case was not suitable for mediation.

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

• On September 25, 2020, a Notice of Claim request was submitted to the Office of the Comptroller and came back negative (**BR 27**).

Squad No.:	10		
Investigator:	Carter Garfield Signature	Inv. Carter Garfield Print Title & Name	7/16/2021 Date
Squad Leader: _	Eric Rigie Signature	IM Eric Rigie Print Title & Name	7/22/2021 Date
Reviewer:	Signature	Print Title & Name	 Date